

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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1<sup>ST</sup> AMENDMENT PRAETORIAN,

Plaintiff,

-against-

THE NEW YORK TIMES COMPANY

-and-

ALAN FEUER,

Defendant.

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STATE OF NEW YORK     )  
                                  )ss:  
COUNTY OF DUTCHESS    )

Anthony C Carlini, Jr. Esq., being duly sworn, deposes and states the following under penalty of perjury:

1. I am a Partner of the law firm Handel & Carlini, LLP (“H&C”), and serve as local counsel for 1<sup>st</sup> Amendment Praetorian (“Plaintiff”).
2. I submit this affidavit in support of an application pursuant to Rule 1.4 of the Local Rules for the United States District Court for the Southern District of New York, for an Order directing Plaintiff to show cause why an order should not issue: (a) authorizing Handel & Carlini, LLP to withdraw from representing Plaintiff in this action; and (b) for such other and further relief as to this Court seems just and proper.

### **RELEVANT BACKGROUND**

3. On January 1, 2023, H&C recorded its representation on behalf of the Plaintiff by filing a Verified Complaint in this matter. However, as noted in the Complaint, the primary attorney handling the litigation is Steven S. Biss, Esq. of Charlottesville, Virginia. H&C was brought on solely as local counsel to coordinate filings and appear in Court as needed.
4. Unfortunately, in August of this year, Mr. Biss suffered from a medical condition which prevents him from practicing law.
5. H&C specializes in commercial litigation and foreclosure practice. As such, the firm does not possess the necessary expertise to proceed in the litigation which involves libel and slander independently.
6. Upon learning of Mr. Biss's medical condition, efforts were made to obtain substitute counsel, but to date those efforts have not been successful, leading to the instant application to be relieved.


### **ARGUMENT**

7. In considering a motion to withdraw under Local Rule 1.4, a court must analyze two factors: (i) the reasons for withdrawal; and (ii) the impact of the withdrawal on the timing of the proceeding. *See Winkfield v. Kirschenbaum & Phillips*, PC No 12-CV-7425, 2013 WL 371673 at \*1 (SDNY Jan 29, 2013).
8. New York's Rules of Professional Conduct explicitly state that a lawyer shall withdraw from the representation of a client when "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client". 22 NYCRR Part 1200; Rule 1.16(b)2).

9. The Comments to Rule 1.16 state that “A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion”. It is also well settled that New York’s Code of Professional Responsibility establishes the appropriate guidelines for the professional conduct of attorneys in the United States District Courts of New York. *Callaway Golf Co. v. Corporate Trade, Inc.*, 2011 US. Dist. LEXIS 76077 at \*6-7 (S.D.N.Y 2011)
10. In the instant matter, Mr. Biss cannot proceed with the litigation due to the severity of his medical condition. As set forth above, H&C does not possess the necessary expertise to proceed with the case without the input of Mr. Biss, who was responsible for all research, drafting, and strategy relative to the litigation.
11. In addition, Defendants will not be prejudiced by H&C’s withdrawal. The case is at its inception and no trial has been scheduled. Defendant filed a motion to Dismiss the Plaintiff’s Amended Complaint on July 20, 2023. That motion is now fully submitted as Plaintiff filed its opposition on August 10, 2023 and Defendant filed a reply on August 17, 2023.
12. H&C is not asserting or retaining a charging lien.
13. No prior application for the relief sought herein has been made.
14. This application is made by order to show cause.

**WHEREFORE**, Handel & Carlini, LLP respectfully requests that this Court grant this Order to Show Cause and allow it to withdraw as counsel for Plaintiff 1<sup>st</sup> Amendment Praetorian, together with such other relief as to this Court seems just and proper.

Dated: December 18, 2023  
Poughkeepsie, New York



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Anthony C. Carlini, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2023 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendants and all interested parties receiving notices via CM/ECF.

By: /s/Anthony C. Carlini, Jr.  
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